



You Have How Much Time on the Books? Unused Accumulated Leave

As we approach the end of another pandemic year, many of you are faced with the issue of an inordinate amount of unused sick or vacation time for your employees. Most of us are familiar with the state law that only allows for the prior year allocation, plus the new year's carryover. Many public employees have accumulated time due to the pandemic. I hope to address some of the issues with unused sick time.

End of the Year Review

In December, we should all be looking at how much accumulated leave is on the books for each employee. This should be an annual review. You should have an individual listing of their vacation, sick, personal, and comp time accumulation. Each individual employee should sign off accepting and acknowledging their accumulated time. I typically did this within the first few weeks of the beginning of the year. In December you should be accumulating that information and be ready for sign off in January.

Review of Accumulated Leave Policy

In December, you should refresh your memory on each labor contract, so you know the exact provisions of the accumulated leave for those employees in a unit. Unorganized employees should follow your policy and procedure. If you don't have a policy, now is the time to write one, or have an ordinance adopted. Absent a labor contract or personnel policy, you should look to state statute NJSA c.40A:9-10.2 to 10.5. Further, and for these years of emergency, NJAC 4A:6-3 reads, "In local service, vacation leave not taken in a given year because of duties directly related to a state of emergency declared by the Governor may accumulate at the discretion of the appointing authority until, pursuant to a plan established by the employee's appointing authority... the leave is used or the employee is compensated for that leave."

The management of employee accumulated leave has a tremendous financial importance. As we all know, accumulated leave is a part of our budget and specifically called out and the

User-Friendly Budget document or the municipal audit, as a footnote to the financial statements.

According to LFN 2002-1, every year each town is required to calculate the full value of all the time that would be due and payable to all employees at the end of the year. This calculation is done by the CFO or HR department. The value of that calculation can be located in the User-Friendly Budget. As calculated, it assumes the liability to the town if you had to pay all the eligible employees their maximum payout for all accumulated time. Of course, this is an abstract number since that liability would never really materialize.

Unless you have a specific—and properly adopted—policy that allows for a “use it or lose it,” you cannot take earned leave away from any public employee.

End of the Year Comp Time

I take this moment to strongly recommend any employee who has unused comp time be paid out before the end of the year. Comp time is overtime earned but not paid. Allowing an employee to accumulate this gives them an advantage since the payout rate continues to increase based on salary increase is typically given in the new year. Unless your labor contract states otherwise, you do not need to allow an employee to accumulate comp time. This is a budgetary decision, however, at some point, you must pay for it. Make sure that the amount of comp time that is accumulated on the books is at time and a half. When calculating the payout of comp time, do not increase the hourly rate by 1.5 times. I've seen that mistake happen often. The employee could end up getting pay at triple time.

Managing Accumulated Time

In those circumstances where the employee has more than two years of accumulated leave; you need to address this issue with each individual employee.

If you have satisfied the requirements of any labor agreement, and you still wish to have an employee drawdown on their accumulated leave, you are within the law to require them to use the leave in a certain manner. For this, you should establish a written procedure. Once written, make sure that you send it to the appropriate unions and any unrepresented employees so they are aware of the procedure. Failure to communicate a policy jeopardizes the enforcement.

Do not make the mistake of telling an employee to “use it or lose it.” Unless you have a specific—and properly adopted—policy that allows for a “use it or lose it,” you cannot take earned leave away from any public employee.

The law does allow for you to structure use of accumulated leave. For example, you can direct the employee to use five days within the first quarter of the new year. You are allowed to even structure exact days that they must take off. When you notify your employee, make sure it is done in writing. Include in the written notice that failure of the employee to use their time as you structured, will be considered insubordination. Do not be unreasonable. Lastly, make sure you do this in conjunction with the employee’s supervisor. However, if you

require an employee to use their time, be careful not to put yourself into a bind by losing an employee at a time when you need them most. For example, you need your DPW workers during the snowy season.

Unused Sick Leave Payout

I want to mention the issue of paying out current employees who don’t use sick time. Also known as sick leave buy back. We may have heard or read the State Comptrollers Investigative Report that was issued March 2, 2012 (https://www.nj.gov/comptroller/news/docs/palisades_park_final_report.pdf). This report indicates that employees hired after May 21, 2020 are only entitled to sick leave payout at retirement of no more than \$15,000. Many towns have policies that provide for end of the year sick leave buy back. This is unsettled law. You should carefully be guided by your labor attorney on how you manage this provision.

I hope this is helpful. As a part of the NJ League’s Labor Advisory Services, I am available to discuss this issue with you. You can reach me at matt@njcs.us to set up a time to talk. [e](#)

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